

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE FASHION EXCHANGE LLC,

Plaintiff,

v.

HYBRID PROMOTIONS, LLC, JEFF CALDWELL,  
JARROD DOGAN, GAVIN DOGAN,  
NATIONAL STORES, INC.,  
HOT TOPIC, INC.,  
PACIFIC SUNWEAR OF CALIFORNIA, INC.,  
ROSS STORES, INC., TWEEN BRANDS, INC.,  
THE TJX COMPANIES, INC.,  
THE WET SEAL RETAIL, INC.,  
SPENCER GIFTS LLC,  
OLD NAVY, LLC, RUE21, INC.,  
LORD & TAYLOR HOLDINGS LLC,  
J.C. PENNEY CORPORATION, INC.,  
BJ'S WHOLESALE CLUB, INC.,  
BOSCOV'S DEPARTMENT STORE, LLC,  
WAL-MART STORES, INC.,  
KOHL'S DEPARTMENT STORES, INC.  
MACY'S RETAIL HOLDINGS, INC.,  
MACYS.COM, INC.,  
SHOPKO STORES OPERATING CO., LLC,  
FAMILY DOLLAR SERVICES, INC.,  
THE CATO CORPORATION,  
BELK, INC., DILLARD'S, INC.,  
NORDSTROM, INC.,  
BEALL'S DEPARTMENT STORES, INC.,  
SEARS BRANDS, LLC,  
MARSHALLS OF MA, INC., BOB'S STORES, LLC,  
DOLLAR GENERAL CORPORATION,  
TARGET CORPORATION,  
URBAN OUTFITTERS, INC.,

Defendants.  
-----X

Civil Action No. 14-CV-1254

SECOND AMENDED  
COMPLAINT FOR  
DAMAGES, INJUNCTIVE  
AND DECLARATORY  
RELIEF

JURY TRIAL DEMAND

Plaintiff The Fashion Exchange LLC (“Plaintiff”), by and through its undersigned attorneys, Zarin & Associates P.C. and Simon Gluck & Kane LLP, for its Complaint against Defendants Hybrid Promotions, LLC (“Hybrid Promotions”), Jarrod Dogan, Jeff Caldwell, Gavin Dogan, National Stores, Inc., Hot Topic, Inc., Pacific Sunwear of California, Inc. (d/b/a Pacsun), Ross Stores, Inc., Tween Brands, Inc. (d/b/a Justice), The TJX Companies, Inc. (d/b/a T.J.Maxx), The Wet Seal Retail, Inc., Spencer Gifts LLC, Old Navy, LLC, Rue21, Inc., Lord & Taylor Holdings LLC, J.C. Penney Corporation, Inc., BJ’s Wholesale Club, Inc., Boscov’s Department Store, LLC, Wal-Mart Stores, Inc. (d/b/a Walmart and Sam’s Club), Kohl’s Department Stores, Inc., Macy’s Retail Holdings, Inc., Macys.com, Inc., Shopko Stores Operating Co., LLC, Family Dollar Services, Inc., The Cato Corporation, Belk, Inc., Dillard’s, Inc., Nordstrom, Inc., Beall’s Department Stores, Inc. (d/b/a Bealls and Stage), Sears Brands, LLC (d/b/a Sears and K-Mart), Marshalls of MA, Inc., Bob’s Stores, LLC, Dollar General Corporation, Target Corporation, Inc., and Urban Outfitters, Inc. (collectively “Defendants”), alleges as follows:

### **NATURE OF THE ACTION**

1. This is an action for trademark infringement, unfair competition and deceptive and unfair trade practices, under the Lanham Act and New York state law, and for a declaration of trademark ownership, under the Declaratory Judgment Act.
2. Plaintiff’s trademark infringement, unfair competition and deceptive and unfair trade practices claims stem from Defendants’ use of the trademarks HYBRID, HYBRID

TEES, HYBRID APPAREL and HYBRID JEMS on the same goods, clothing, as Plaintiff uses its trademarks HYBRID and HYBRID & COMPANY. On these claims, Plaintiff seeks injunctive relief as well as monetary damages, including but not limited to compensatory and punitive damages.

3. Plaintiff's declaration of trademark ownership claim stems from Defendant Hybrid Promotions' effort to obtain cancellation of Plaintiff's trademark registration, Registration No. 3,723,220, for the trademark HYBRID & COMPANY. As relief for this claim, Plaintiff seeks a declaration that its trademark registration for the mark HYBRID & COMPANY is valid and enforceable.

#### **THE PARTIES**

4. Plaintiff The Fashion Exchange LLC is a limited liability company organized and existing under the laws of the State of New York, with a principal place of business at 1407 Broadway, Suite 1706, New York, New York 10018.

5. Upon information and belief, Defendant Hybrid Promotions LLC is a limited liability company organized and existing under the laws of the State of California, with a principal place of business at 10711 Walker Street, Cypress, California 90630.

6. Upon information and belief, Defendant Jarrod Dogan is a citizen of California, the Chief Executive Officer and a co-founder of Hybrid Promotions LLC, and maintains a residence at 706 24<sup>th</sup> Place, Hermosa Beach, California 90254.

7. Upon information and belief, Defendant Jeff Caldwell is a citizen of California, the Executive Vice President and a co-founder of Hybrid Promotions LLC, and maintains a place of business at 10711 Walker Street, Cypress, California 90630.

8. Upon information and belief, Defendant Gavin Dogan is a citizen of California, the Chief Marketing Officer of Hybrid Promotions LLC, and maintains a residence at 3010 Grayson Avenue, Venice, California 90291.

9. Upon information and belief, Defendant National Stores, Inc. is a corporation organized and existing under the laws of the State of California, with a place of business at 15001 South Figueroa Street, Gardena, California 90248.

10. Upon information and belief, Defendant Hot Topic, Inc. is a corporation organized and existing under the laws of the State of California, with a place of business at 18305 East San Jose Avenue, City of Industry, California 91748.

11. Upon information and belief, Defendant Pacific Sunwear of California, Inc. is a corporation organized and existing under the laws of the State of California, with a place of business at 3450 East Miraloma Avenue, Anaheim, California 92806.

12. Upon information and belief, Defendant Ross Stores, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 5130 Hacienda Drive, Dublin, California 94568.

13. Upon information and belief, Defendant Tween Brands, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 8323 Walton Parkway, New Albany, New York 43054.



14. Upon information and belief, Defendant The TJX Companies, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 770 Cochituate Road, Framingham, Massachusetts 01701.

15. Upon information and belief, Defendant The Wet Seal Retail, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 26972 Burbank, Foothill Ranch, California 92610.

16. Upon information and belief, Defendant Spencer Gifts LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at 6826 Black Horse Pike, Egg Harbor Township, New Jersey 08234.

17. Upon information and belief, Defendant Old Navy, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at Two Folsom Street, San Francisco, California 94105.

18. Upon information and belief, Defendant Rue21, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 800 Commonwealth Drive, Warrendale, Pennsylvania 15086.

19. Upon information and belief, Defendant Lord & Taylor Holdings LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at 424 Fifth Avenue, New York, New York 10018.

20. Upon information and belief, Defendant J.C. Penney Corporation, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 650 Legacy Drive, Plano, Texas 75024.

21. Upon information and belief, Defendant BJ's Wholesale Club, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 25 Research Drive, Westborough, Massachusetts 01581.

22. Upon information and belief, Defendant Boscov's Department Store, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at 4500 Perkimen Avenue, Reading, Pennsylvania 19606.

23. Upon information and belief, Defendant Wal-Mart Stores, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 702 SW 8<sup>th</sup> Street, Bentonville, Arkansas 72716.

24. Upon information and belief, Defendant Kohl's Department Stores, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at N56W 170000 Ridgewood Drive, Menomonee Falls, Wisconsin 53051.

25. Upon information and belief, Defendant Macy's Retail Holdings, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 7 West Seventh Street, Cincinnati, Ohio 45207.

26. Upon information and belief, Defendant Macys.com, Inc. is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 7 West Seventh Street, Cincinnati, Ohio 45207.

27. Upon information and belief, Defendant Shopko Stores Operating Co., LLC is a limited liability company organized and existing under the laws of the State of Delaware, with a place of business at 700 Pilgrim Way, Green Bay, Wisconsin 54307.